United States Court of Appeals

for the Second Circuit

APPENDIX

76-2140

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

GERALD COLLINS,

Appellant

Docket No. 76-2140

-against-

UNITED STATES OF AMERICA

APPENDIX

MARK A. LANDSMAN
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Office & P.O. Address
66 Court Street
Brooklyn, New York 11201
212-875-9440

PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

76C 545 COLLINS vs USA

E	NR.	PROCEEDINGS	
3-22-76		Motion to vacate sentence filed.	(1) (cg)
XXXX		XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX	
-76		By PLATT, J. - Order to show cause dtd 3-24-76 filed. (copies mailed as directed).	(2)
-30-76		Affidavit of USA in opposition on to consolication applications filed in 76C-549.	---
-7-76		Case called, Before-PLATT, J. Motion for consolidation granted.	
11-76		Letter dtd. 5-7-76 from G. Collins with petitioner's traverse filed.	(3)
-1-76		Letter dtd 5-3-76 to J. Platt from Asst U.S. Atty filed.	(4)
-7-76		Petitioner's traverse filed.	(5)
-16-76		Petitioner's change of address filed.	(6)
-16-76		By PLATT, J Memorandum & Order dtd 8-16-76 that a hearing be held on 10-1-76 at 2.00 PM to determine the issues of fact. Ordered that Stephen Falmhaft is appointed to respresent petitioner Peters, Mark A. Landsman is appointed to represent petitioner Collins and Raphael Scotto is appointed to respresnnt petitioner Flammia. Copies of this Memo & Order mailed to each of the petitioners, the U. S. Atty for the Eastern District, and to petitioners' newly and formerly appointed counsel mg	(7)
-24-76		BY PLATT, J.- Writ of Habeas Corpus ad testificandum for Gerald Collins issued.	----
-8-76		Before PLATT, J.- case called - petitioner & counsel present - petitioner's motion for an order pursuant to T 28 USC 2255 - hearing ordered and begun - hearing concluded - petitioner's motion is denied - clerk to enter notice of appeal.	---
-10-76		Notice of appeal filed. Copy mailed to the C of A.	(8)
-14-76		By PLATT, J-Appointment voucher filed.	(9)
-18-76		Writ for Collins ret. and filed/ executed.	(10)
-1-76		Civil appeal scheduling order filed.	(11)
-1-76		By PLATT, J-Memo & Order dtd 10-29-76 that petitioners' letter dtd 10-13-76 be accepted and filed as a timely notice of appeal, that petitioners' application for copies of the record of the hearing is granted, motion to prosecute w/o the required fees is granted, the request for counsel is denied etc filed. Copies mailed.	(12)
-1-76		Letter dtd 10-13-76 to J. Platt from petitioners filed.	(13)

75 1403
Leave - Epistolary
of 11-21-75

UNITED STATES DISTRICT COURT
Eastern District of New York
----------X

UNITED STATES OF AMERICA

Respondent

- against -

Gerard Collins, N.Y.S., 20434

Petitioner
----------X

Notice of Motion
For Permission to
Appeal Belatedly

Ind. No. 75 CR 275

To: The Honorable Court

Petitioner, Gerard Collins, N.Y.S., 20434, respectfully submits this petition for the following reasons:

Petitioner avers that he is presently incarcerated in Greenhaven Correctional Facility, Drawer "B", Stormville, New York, 12582, as a result of a New York State criminal conviction for a period of three and one half to seven years imposed on the 22nd day of January 1974 (Petitioner having been arrested September 1st, 1973) for the alleged offense "Robbery" 3rd degree upon a plea of "Guilty" in non-jury trial before the Honorable Justice Peter T. Farrell, Queens County Supreme Court.

Under date of November 21, 1975, petitioner was sentenced in Federal District Court for the Eastern District of New York by the Honorable Judge Thomas Platt, Jr., to a term of eight (8) years to run consecutively to the present State Prison term petitioner is now serving. This "consecutive" sentence was predicated upon a conviction under Ind. No. 75 CR 275 by a plea of "Guilty" of the alleged offense "Possession of a Weapon". Petitioner was represented by Court-appointed counsel, Mr. John Corbett, Esq.

"Jurisdiction"

Jurisdiction in this proceeding in conferred upon the Honorable Court pursuant to the provisions of Title 28, U.S.C., 2255, Rule 3-(C)-(D).

Petitioner contends that he was denied the right to Appeal the eight year consecutive sentence as imposed by the Honorable Judge Platt, Jr., Eastern District of New York within the ten day time limit pursuant to Title 28, U.S.C., Sec. 602, due

to the failure of the Court and petitioner's Court-appointed counsel, Mr. John Corbett's failure to advise the petitioner of his lawful and constitutional right to Appeal and offers the below in support of his contention.

1. Upon the completion of sentencing, neither the Court, The Court Clerk or Defense Counsel advised your petitioner of his lawful and constitutional right to appeal within the prescribed time limit set by law.

2. Shortly after sentencing, petitioner and two co-defendants, Paul Flammia and Charles Peters were conversing with Mr. Corbett and Counsel, Mr. Eugene Mastroperi (Counsel for two co-defendants who elected to go to trial). Petitioner vociferously demanded counsel Mr. Corbett Appeal the consecutive eight year sentence for the following reasons:

"A". Petitioner stated to counsel that the Trial Judge had no authority to predicate the eight year consecutive sentence upon the evidence and/or testimony adduced at co-defendant's trial as the petitioner had "Plea Bargained".

"B". Petitioner should have been sentenced prior to the commencement of trial of co-defendant's who had elected to go to trial rather than "Plea-Bargain".

"C". The sentencing Judge presiding at trial of co-defendants had taken into his consideration and deliberation all of the [illegible] testimony illicited at said trial by the prosecution's Major Wittness (Mr. Paul Fleisher, a co-conspirator but not a co-defendant).

Certain testimony was illicited from the prosecution wittness that could not be "Objected" to by your petitioner who elected to "Plea-Bargain" and not engage in trial.

This testimony, which amounted to a separate and distinct charge not included in Ind. No. 75 CR 275, was not "Objected" to

at trial by Defense Counsel's for those who elected to go to trial, i.e., co-defendant's Martromgelo and Addoloria.

This testimony, perforce, had effect upon the sentencing Court's determination herein and, thus, was prejudicial to petitioner and sentencing thereof.

Petitioner's counsel, Mr. John Corbett, while in the company of your petitioner's co-defendant's Flammia and Peters and counsel Mr. Eugene Mastroperi, unequivocally stated at that time that:

> Petitioner's could "Not Appeal" the sentence as he had "Plea-Bargained", but could insert into the Court a "Motion for a Modification and/or Reduction in sentence" within the prescribed one hundred twenty day time limit prescribed by law.

Failure of the Court, The Court Clerk and/or Defense Counsel to advise your petitioner of his lawful and constitutional right to Appeal sentencing denied your petitioner Due Process and Equal Protection of Law.

Petitioner petitioned the Honorable Judge Thomas Platt, Jr., Eastern District Court, pursuant to Rule 35 of the Federal Rules of Procedure for a modification and/or reduction in sentence, citing disparity and severity in sentence as opposed to those co-defendant's who elected to go to trial and were found "Guilty" on all counts contained there-in. Petitioner's petition for modification and/or reduction in sentence was denied by the Honorable Judge Thomas Platt, Jr., on the 21st day of January 1976.

Petitioner has since become knowledgable that he did and does have a legal and constitutional right to appeal and should have been made aware of this right either through the Court and/or Counsel of record at sentencing.

Petitioner contends that the failure of the Court, The Court Clerk and Defense Counsel to advise the petitioner of his legal and constitutional right to Appeal

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denied the petitioner Due Process and Equal Protection of Law as enumerated in the Fourteenth Amendment of the United States Constitution.

Wherefore, petitioner prays this Honorable Court will in the insterests of justice and Consitutional Rights grant him the ritht to appeal the sentencing and/or sentence out of time, in liew of timely notice accordingly. Further, that the Court appoint counsel under the Criminal Justice Act to perfect said Appeal.

Respectfully submitted,

Gerard Collins

Gerard Collins
Drawer "D" -C-1-122
Stormville, New York,
12582

State of New York:
County of Dutchess:
Sworn to before me

This 16 Day of March 1976

Edmond W. Gifford
Notary Public

ESMOND W. GIFFORD, SR.
Notary Public, State of New York
Dutchess County
Commission Expires March 30, 1977

Original: Clerk of Court-Pro-Se
Brooklyn, New York, 11201

C.C. : United States Attorney's Office
Brooklyn, New York, 11201
225 Cadman Plaza, East.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

GERALD COLLINS,

Petitioner,

76 C 545

-against-

THE UNITED STATES OF AMERICA,

Respondent.

- -x

CHARLES PETERS,

Petitioner,

76 C 549

-against-

THE UNITED STATES OF AMERICA,

Respondent.

- -x

PAUL FLAMMIA,

Petitioner,

76 C 598

-against-

THE UNITED STATES OF AMERICA,

Respondent.

- -x

MEMORANDUM AND ORDER

PLATT, D.J.

Petitioners, pro se, have filed motions to vacate, set aside or correct the sentences previously imposed upon them by this Court. Title 28 U.S.C. § 2255. The three cases were consolidated because each raises the identical issue of whether petitioners were denied the effective assistance of counsel.

Collins, Peters and Flammia each pled guilty to Count One of Indictment 75 CR 275 (use of a firearm in the commission of a felony [theft of goods from a motortruck in interstate commerce] in violation of 18 U.S.C. § 924(c)(1)(2)). Each was sentenced to a term of incarceration to be served consecutively to the State prison term they were already serving.

The gravamen of petitioners' motion is that they were denied due process of law because neither their counsel nor the Court, at the time sentence was imposed, advised them of the right to appeal their respective sentences. Each petitioner was represented by assigned counsel pursuant to the provisions of the Criminal Justice Act, 18 U.S.C. § 3006A. Petitioners allege that they requested their respective counsel to appeal their sentences because: (1) they were not sentenced until after their co-defendants' trial was completed; and, (2) the Court predicated their sentences on information gained from hearing the co-defendants' trial which denied petitioners the opportunity to rebut trial testimony which prejudiced them in the eyes of the Court.

Petitioners contend that in their presence, Collins' attorney, John Corbett, Esq., stated to them that they had no right to appeal a sentence imposed after a guilty plea and that a Rule 35 motion was their only remedy if they thought that the sentences were too harsh. Allegedly, when Corbett told them that they had no right to appeal the other counsel were present and did not speak up to correct Corbett's statement Thus, petitioners contend that they were led to believe that they had no right to appeal their sentences. According

to petitioners, by the time they found out that they did have a right to appeal, the time for filing an appeal had lapsed; and therefore, petitioners argue that their right to appeal has been frustrated by ineffective assistance of counsel.

The Government's answer to the motion argues that each petition is identical "boilerplate" and evidences a "lack of sincerety". Additionally, it is contended that the petitions contain self-serving allegations and are replete with conclusory statements and that, since the allegations are not supported by extrinsic evidence and there is no affidavit from the attorneys involved, petitioners have failed to meet their burden of setting forth specific facts which they are in a position to establish by competent evidence. Dalli v. United States, 491 F.2d 758 (2d Cir. 1974). Therefore, the Government argues, the failure to set forth specific facts requires this Court to dismiss the petitions.

Because a motion pursuant to Section 2255 is a collateral attack on the judgment of conviction or sentence, the burden is on the petitioners to establish a basis for relief on the grounds set forth in the statute. Consequently, to be successful on this motion the petitioners must allege substantial issues of fact, which, if proven, would entitle them to the relief they seek. See Taylor v. United States, 229 F.2d 826 (8th Cir.), cert. denied, 351 U.S. 986 (1956); United States v. Pisciotta, 199 F.2d 603 (2d Cir. 1952). In determining whether to grant an evidentiary hearing on the petition, the Court is mindful of its obligation to do so "[U]nless the motion and files and records of the case conclusively show that the prisoner is entitled to no relief." Title 28 U.S.C. § 2255. See Torres v. United States, 370 F.Supp 1348 (E.D.N.Y. 1974).

Since petitioners argue ineffective assistance of counsel it is doubtful that an affidavit from their attorneys would support their claim. If such an affidavit had been submitted, three possible alternatives suggest themselves: (1) a denial that such advice was given; (2) a statement that an appeal was discussed but that petitioners instructed counsel not to appeal; or, (3) a statement that such advice was given. If either of the first two alternatives were the contents of the affidavit a hearing would be required to resolve the issue of fact. If the third possibility were the answer, there would be no question of fact but rather a question of law as to whether petitioners were denied effective assistance of counsel by the advice.

The initial question to be determined is whether petitioners sufficiently meet the custody requirements of Title 28 U.S.C. § 2255 to confer jurisdiction on this Court to consider the merits of petitioners' contentions. As previously stated, petitioners are in State custody and have yet to begin serving their federal sentences. Section 2255 states in pertinent part, "A prisoner in custody under sentence of a court established by an Act of Congress . . . may move the court which imposed the sentence to vacate, set aside or correct the sentence" (emphasis added). The Eighth Circuit has held that a district court does have jurisdiction to hear a petition under circumstances similar to the case sub judice. In Jackson v. United States, 423 F.2d 1146, 1149 (8th Cir. 1970) a defendant had been sentenced to three years imprisonment to run consecutively to the State sentence he was already servin The district court dismissed the petition without prejudice to renew the petition after the petitioner was in federal custod

and serving his federal sentence. In reversing the lower court, the Eighth Circuit held that the rationale of Peyton v. Rowe, 391 U.S. 54 (1968), involving a section 2241 habeas corpus petition, should be extended to section 2255 proceedings:

> "'Custody' under Peyton v. Rowe, supra, relates to a petitioner's 'status for the entire duration of [his] imprisonment'. Under these circumstances, we think the petitioner, a state prisoner, may challenge his federal sentence although he has yet commenced to serve that sentence."

The First Circuit also adopted the extension of the Peyton holding to a section 2255 proceeding in Desmond v. United States Board of Parole, 397 F.2d 386, 389 (1st Cir.), cert. denied, 393 U.S. 919 (1968):

> "In Peyton v. Rowe, . . . the court held that a defendant while serving the first of two consecutive sentences could attack the second. It does not seem to us a significant stretch to say that he may attack a federal sentence, yet to be served, while defendant is in custody completing a state sentence. The same principles which dictated Peyton v. Rowe, seem to us to support jurisdiction here. To be sure, defendant is not physically 'in custody under sentence of a court established by Act of Congress', but if custody is to be construed as single and continuous, we may join the courts as well. There is just as much reason to resolve the legality of resumed incarceration under an existing sentence before such resumption occurs as to resolve the legality of continued incarceration under a consecutive sentence yet to commence."

The Sixth Circuit in Simmons v. United States, 437 F.2d 156, 159 (6th Cir. 1971), has also extended the Peyton rationale to section 2255 proceedings, "We agree with the First and Eighth Circuits' construction of section 2255 and therefore join them in holding that 28 U.S.C. § 2255 is available to a prisoner in state custody attacking a federal sentence scheduled to be served in the future." Although the

Second Circuit has yet to express its opinion as to this issue it has held, in a section 2241 habeas corpus proceeding, that a prisoner in federal custody may attack a State sentence yet to be commenced. United States ex rel. Meadows v. New York, 426 F.2d 1176 (2d Cir. 1970), cert. denied, 401 U.S. 941 (1971). We agree that the logical extension of the Supreme Court's holding in Peyton points to the conclusion that petitioners are not barred from seeking relief from this Court prior to the completion of their State sentences. Therefore, we proceed to a consideration of the merits of petitioners' argument.

The starting point in our consideration of petitioners' case is an acknowledgment that an appeal from a judgment of conviction in the federal courts is a matter of right. In Coppedge v. United States, 369 U.S. 438, 441-42 (1962), the Supreme Court held:

> "Present federal law has made an appeal from a District Court's judgment of conviction in a criminal case what is, in effect, a matter of right. That is, a defendant has a right to have his conviction reviewed by a Court of Appeals, and need not petition that court for an exercise of its discretion to allow him to bring the case before the court. The only requirements a defendant must meet for perfecting his appeal are those expressed as time limitations within which various procedural steps must be completed."

Furthermore, the fact that petitioners pled guilty does not foreclose them from an appeal. See e.g., United States v. Brown, 479 F.2d 1170 (2d Cir. 1973). While appellate opinions continue to adhere to the doctrine of nonreview of sentences if the sentence is within the statutory maximum (See e.g., United States v. Sweig, 454 F.2d 181 (2d Cir. 1972); United States v. Rosenberg, 195 F.2d 583 (2d Cir. 1952), cert. denied,

344 U.S. 838 (1953)), recent cases have made a distinction between review of the length of a sentence and review of the factors considered in arriving at a particular sentence. See e.g., United States v. Tucker, 404 U.S. 443 (1972); Townsend v. Burke, 334 U.S. 736 (1948); United States v. Schwartz, 500 F.2d 1350 (2d Cir. 1974); United States v. Driscoll, 496 F.2d 252 (2d Cir. 1974); McGee v. United States, 462 F.2d 243 (2d Cir. 1972); United States v. Holder, 412 F.2d 212 (2d Cir. 1969). In Holder, supra, the Second Circuit, although recognizing the long line of precedent holding that the length of a sentence imposed by a district court is non-reviewable, stated:

> "If the sentence could be characterized as so manifest an abuse of discretion as to violate traditional concepts, it is possible that we might, pursuant to our power to supervise the administration of justice in the circuit, overturn our long established precedents of non-intervention and intervene." 412 F.2d at 215.

See also United States v. Malcolm, 432 F.2d 809 (2d Cir. 1970). Furthermore, appellate review of sentences is common where the sentencing court has failed to follow proper procedure in imposing sentence.

Assuming that petitioners were entitled to appeal their sentences at the time they were imposed, the Government argues that petitioners must now show a non-frivolous appeallate issue in order for the Court to grant relief. However, in Rodriguez v. United States, 395 U.S. 327, 330 (1969), the Supreme Court reversed a Ninth Circuit opinion which held that before a frustrated appeal could be reinstated

via a section 2255 proceeding some showing of merit to the appeal had to be made:

> "The Ninth Circuit seems to require an applicant under 28 U.S.C. § 2255 to show more than a simple deprivation of this right before relief can be accorded. It also requires him to show some likelihood of success on appeal; if the applicant is unlikely to succeed, the Ninth Circuit would characterize any denial of the right to appeal as a species of harmless error. . . . Moreover, the Ninth Circuit rule would require the sentencing court to screen out supposedly unmeritorious appeals in ways this Court rejected in Coppedge. Those whose right to appeal has been frustrated should be treated exactly like any other appellants; they should not be given an additional hurdle to clear just because their rights were violated at some earlier stage in the proceedings. Accordingly, we hold that the courts below erred in rejecting petitioner's application for relief because of his failure to specify the points he would raise were his right to appeal reinstated."

Therefore, it is clear that a determination as to the merit or lack of merit in petitioners' appeal is not a question which should concern this Court. Rather, the question is simply whether there has been a frustration of the right to appeal. See United States ex rel. Williams v. LaValle, 487 F.2d 1006, 1010 (2d Cir. 1973), cert. denied, 416 U.S. 916 (1974); United States ex rel. Smith v. McMann, 417 F.2d 648, 654 (2d Cir. 1969)(en banc), cert. denied, 397 U.S. 925 (1970).

Finally, the question remains as to what standard should be applied in reaching a determination as to whether petitioners have been denied effective assistance of counsel.

In Anders v. California, 386 U.S. 738, 744 (1967), the Supreme Court set out the procedure to be followed by counsel who thought that the filing of an appeal from a criminal case was frivolous. There, the Court stated:

> "The constitutional requirement of substantial equality and fair process can only be attained where counsel acts in the role of an active advocate in behalf of his client, as opposed to that of amicus curiae. . . . His role as advocate requires that he support his client's appeal to the best of his ability. Of course, if counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw. That request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal. A copy of counsel's brief should be furnished the indigent and time allowed him to raise any points that he chooses; the court - not counsel - then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it so finds it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits if state law so requires. On the other hand, if it finds any of the legal points arguable on their merits (and therefore not frivolous) it must, prior to decision, afford the indigent the assistance of counsel to argue the appeal."

In United States ex rel. Randazzo v. Follette, 444 F.2d 625, 629 (2d Cir.), cert. denied, 404 U.S. 916 (1971), a State prisoner habeas corpus proceeding, the Second Circuit pointed out that the "conduct such as to shock the conscience of the court and make the proceedings a farce and a mockery of justice" standard normally applied when ineffective assistance of counsel is alleged, does not control on the issue of whether an appeal has been frustrated:

> "Had Dickman [counsel] consulted with Randazzo [defendant] as to the usefulness of the appeal and if Randazzo had then, after consultation with counsel, decided not to appeal, it is clear that the merits of the appeal would be quite relevant to the quality of Mr. Dickman's representation and advice. However, this is not the case before us. Randazzo claims that Mr. Dickman unilaterally decided not to prosecute the appeal without giving any notice to him. While counsel may not need to consult with his client on all tactical aspects of an appeal, clearly the client should be informed that counsel has decided to abandon the case so that a client may find alternative means of representation if he so desires. Thus, if Randazzo was indeed unaware of Mr. Dickman's decision not to perfect the appeal, he was deprived of his right to effective assistance of counsel. . . . [A] hearing is required to determine the facts on this issue."

Other Circuits as well have held that the failure by defense counsel to pursue an appeal, when requested to do so, amounts to frustration of the right to appeal and ineffective assistance of counsel which requires the granting of relief. See e.g., Kent v. United States, 423 F.2d 1050 (5th Cir. 1970); Cartwright v. United States, 410 F.2d 122 (6th Cir. 1969); Jenkins v. United States, 399 F.2d 981 (D.C. Cir. 1968).

The issue of whether petitioners' right to appeal was frustrated by counsels' advice presents a factual issue which must be resolved by a hearing. Accordingly, it is

ORDERED that a hearing be held at 2:00 PM on October 1, 1976, to determine the issues of fact as outlined above.

It is further ORDERED that Stephen Flamhaft, Esq., is hereby appointed to represent petitioner Peters; Mark A. Landsman, Esq., is hereby appointed to represent petitioner Collins; and, Raphael Scotto, Esq., is hereby appointed to

represent petitioner Flammia.

The Clerk of the Court is directed to forward a copy of this Memorandum and Order to each of the petitioners, to the United States Attorney for the Eastern District of New York, and to petitioners' newly and formerly appointed counsel.

Thomas C. Platt
U.S.D.J.

August 16, 1976

Your Full Name and Address

's Full Name and Number

17

Name Att. Mr. John Corbett, Esq.

Street & No. 66 Court Street

City Brooklyn State N.Y., 11201 (Zip Code)

DRAWER B
STORMVILLE, N. Y. 12582

Date October 13, 1975

DEFENDANT'S EXHIBIT A EV

Att. Mr. John Corbett, Esq.
46 Court Street
Brooklyn, New York, 11201

Gerard Collins-20434
Drawer "L"
Stormville, New York, 12582

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October 13, 1975

Dear Mr. Corbett;

Just thourht I'd drip a couple of lines to see how everything is going and to ask if yOu have some inkling as to how hard we will get hit at the time of Sentencing. I understand that there were quite a few surprises bourtht forth during Joe and Rockys Trial. I expect to get a copy of the Transcript sometime this week but the revelations will not be shocking to say the least. I would appreciate knowing the Day we are to be Sentenced if you have been informed yet and would like to ask a few questions that I pray you'll answer, Via Letter, Prior to Sentencing.

I hope you will attempt to have me Sentdnced under T-18-Sec.-4208-Sub A-1-. You may think I'm abking an awful lot considering everything but if I don't ahk and you don't answer, I'll never know. Even if I ask you may not be able to gibe a Positive, Yes or No but at leant I'll feel better knowing that we discussed it. Due to the fact, That this is my First Federal Conviction do I stand a, Snow Balls Chance in Hell or receiving a, Suspended Sentence or Probation. Yeah, I'm taking my Prior State Record into consideration that I know the Judge and the U.S. Attorney will look at but I'm also looking at the State Time I'm now doing, 3-1/2-7Yrs, Plus my Age, Health, Family, Etc. Though they could have Convicted us easily, (As per Joe's Trial), We did Cop-Out, For whatever thats werth.

Also any chance of having this Sentence pronounced, Nunc Pro Tunc, To April 25, 75, The Day we first appeared in Court to answer to this Charge. Just one more Item, Should the Sentence be a, Suspended and/or Probation, All litigation will, Cease, As I will not Appeal the Sentence nor request a Modification of Sentence pursuant to Rule 35 within the One Hundred Twenty Days as prescribed by Statute.

I also presume Greenhaven will be the Designated Place where we will serve the Presumably, "Concurrent Sentence" imposed in the District Court.

Speaking for Me and Pauley John, We all know that regardless of what transpires, "We are through". Sickness-Age and Time plus a Rotten Prior Record/s prevent us from ever straying again unless we both wan't to spend the rest of our Lives under Incarcerated Suprevision, A Position Neither We nor Our Families Relish.

It may also appear as though we are asking for the Moon but believe me when I say, I have seen more serious cases grnated a Hell of a lot of consideration by the Dirstict Courts which you wouldn't believe.

I'm sending a copy of this letter to Mr. Sheinberg so We'd appreciate an answer from either of you prior to Sentencing at our place of Incarceration.

Thanks again, Lets hear from you, Ok!

Respectfully,

Gerard Collins

Paul G. Leonardi

P.S. Please send us Copies of the Transcripts of the Hearings and Cop-out - Thank You
J-P

Have had the Civil Suit Interested?